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No. 88-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

RALPH C. BEHNING, et al.,

Petitioner,

vs.

CAMELBACK SKI CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

DENNIS F. O'BRIEN
PHILIP O. FOARD
WHITE, MINDEL, CLARKE & HILL
The Susquehanna Building
Sixth Floor
29 West Susquehanna Avenue
Towson, Maryland 21204
(301) 828-1050

Attorneys for Petitioners
Ralph C. Behning

QUESTION PRESENTED FOR REVIEW

Does the fixed site nature of the Respondent's multi-State recreational facility require an assertion of the Forum State's general jurisdictional powers under the Due Process Clause of the Fourteenth Amendment?

PARTIES

There were three parties to the proceedings in the Court of Appeals of Maryland. They are the Petitioners, Ralph C. and Mary Behning, and the Respondent Camelback Ski Corporation. A separate Corporation known as Camelback Associates, Inc. was originally sued. Judgment was entered in favor of that corporation in the Circuit Court for Baltimore County. This judgment was not appealed. Another ski resort, Sugarbush (Vermont) sought and was granted leave to file an Amicus brief.

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

Ralph C. and Mary Behning, respectfully petition for a Writ of Certiorari to review or summarily reverse the final decision of the Court of Appeals of Maryland.

OPINIONS BELOW

The opinion of the Court of Appeals of Maryland is reported at 312 Md. 330, 539 A.2d 1107 (1988) (Appendix A, A-1).

The opinion of the Supreme Court of the United States is reported at 480 U.S. 901, 107 S.Ct. 1341 (1987) (Appendix B, A-11).

The opinion of the Court of Appeals of Maryland is reported at 307 Md. 270, 513 A.2d 874 (1986) (Appendix C, A-14).

The opinion of the Court of Special Appeals of Maryland is reported at 61 Md. App. 11, 484 A.2d 646 (1984) (Appendix D, A-29).

The opinions of the Circuit Court for Baltimore County are unreported (Appendix E, A-37; Appendix F, A-40).

JURISDICTION

The judgment of the Court of Appeals of Maryland affirming the lower Courts dismissal of the Petitioners suit for lack of personal jurisdiction over the Defendant, was reinstated on April 11, 1988, one year after this Court granted Certiorari, vacated the original judgment and remanded for reconsideration in accordance with the Court's recent decision in *Asahi Metal Industry Co.* v. *Superior Ct. of Calif.*, 480 U.S. , 107 S.Ct. 1026 (1987). This Court has jurisdiction to review the final decision of the Court of Appeals of Maryland by Writ of Certiorari pursuant to 28 U.S.C. Section 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION

The Due Process Clause of the Fourteenth Amendment in the United States Constitution provides:

> . . . nor shall any State deprive any person of life, liberty, or property, without due process of law . . .
> U.S. Const. amdt. XIV, Section 1.

MARYLAND STATUTES

MARYLAND CODE ANNOTATED, COURTS AND JUDICIAL PROCEEDINGS ARTICLE, Section 6-103(b)(4) provides:

> (b) In general—A court may exercise personal jurisdiction over a person, who directly or by an agent;
>
> (4) Causes tortious injury in the State or outside the State if he regularly does or solicits business, engages in any other persistent course of conduct in the State or deserves substantial revenue from goods, food,

services or manufactured products used or consumed in the State.

* * *

STATEMENT OF THE CASE

I.

PROCEDURAL STATUS AND METHOD OF RAISING AND DISPOSING OF CONSTITUTIONAL ISSUE IN STATE COURTS.

The Petitioners, Ralph C. and Mary Behning (hereafter "Behnings") are Maryland residents. The Respondent, Camelback Ski Corporation (hereafter Camelback) is a Pennsylvania corporation that operates a ski resort in the Pocono Mountains in Eastern Pennsylvania. The Behnings filed suit in Maryland for injuries sustained by Ralph Behning while skiing at Camelback. Camelback filed a motion raising preliminary objection to the suit on the ground that the Court lacked jurisdiction under the Due Process Clause of the Fourteenth Amendment to the Constitution.[1]

The trial court first denied then granted Camelback's motion, finding in part that while the facts demonstrated a pattern of "regular . . . solicitation" and a "persistent course of conduct" over the years directed to entice Maryland residents to its regional recreational facility in the Poconos, such did not meet the "continuous and systematic" general business contacts necessary to satisfy due process objections when the tortious injury occurs outside the State. (A-42). The State's intermediate appellate court, believing *Worldwide Volkswagen* v. *Woodson*, 444 U.S. 286 (1980) was controlling, and the Defendant had

1. The Motion also sought to dismiss the suit under Maryland's Long-Arm Statute. However, the Court of Appeals of Maryland has consistently held that the Long-Arm Statute shall be interpreted to the very limits of due process, and therefore the only issue concerns the limitations placed upon the States' jurisdictional powers under the Fourteenth Amendment to the Constitution of the United States. (A-16).

purposefully included Maryland within its regional multi-state market, reversed. (A-29).

The Court of Appeals of Maryland (hereafter "Court of Appeals") granted certiorari and reversed the Court of Special Appeals, holding that the fixed-site nature of the defendant's out of state business precluded an assertion of the State's specific jurisdictional powers and that defendant's contacts within the State were insufficient to establish general jurisdiction under the Due Process Clause of the Constitution.

> "Notwithstanding claims to the contrary by the Behnings, the jurisdiction they seek is general, and not specific. Their cause of action arose out of and is related to the alleged negligence of Camelback in the design, construction and maintenance of its ski slopes in Pennsylvania." (A-26).

This Court granted certiorari, vacated the judgment and remanded the case back to the Court of Appeals for reconsideration in light of the Court's recent decision in *Asahi Metal Industry Co.* v. *Superior Ct. of Calif.*, 480 U.S. , 107 S.Ct. 1026 (1987). (A-11). On remand, the Court of Appeals agreed "the Defendant knowingly and regularly derived economic benefit from the residents of the forum State" (A-6); but that, unlike *Asahi*, the litigation did not involve a typical products liability case. (A-6). The Court, therefore, affirmed its earlier determination, concluding:

> "This case does not fit the classic mold of specific jurisdiction, and we find that the contacts required to support jurisdiction more nearly resemble those of a general jurisdiction case. Behning was not injured by any product Camelback sent into Maryland" (A-7).

II.

FACTS

As this Court pointed out in *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462 (1985), the trial court's finding that Respondent had engaged in "regular . . . solicitation" and a "persistent course

of conduct" within the State of Maryland must stand unless "clearly erroneous". Moreover, this determination is based upon a review of the record as a whole and is not limited to specific facts referred to in the Court's written opinion. *Burger King*, 471 U.S. at 486-487. Here, the record taken in the light most favorable to the trial court's findings shows that:

1. Maryland, to the extent Respondent has a multi-state destination business, is within its natural marketing area;

2. Overnight or destination business is a substantial part of Respondent's Four Million Dollar per season business on weekends and holidays, and 10% to 20% at other times;

3. Camelback is popular with Maryland residents and Respondent is sure it has many customers from Maryland. As Respondent's head of sales and promotions put it:

> A. We do get business from Maryland.
>
> Q. You do solicit business from Maryland.
>
> A. Upon request and some of the means that you have seen here, we do;

4. Respondent maintains Watts lines for toll free information for customers within its natural marketing area, but outside its local exchange area. And, although it insists that the purchase of such numbers automatically includes Maryland, Connecticut, Delaware, New Jersey, New York, D.C. and Virginia as well as Pennsylvania, its advertising of those toll free numbers in its brochures (while referring specifically to Maryland, D.C. and Virginia, as well as area codes in Eastern Pennsylvania) excludes Western Pennsylvania and Connecticut, which all would agree are outside Respondent's regional market.

5. Respondent prepares brochures each year; and, in conjunction with major hotels (including a Holiday Inn, Sheraton and Best Western, and some 40 others in the area), arranges destination packages for both lodging and skiing at discounted rates. These admittedly are sent (albeit "upon request") yearly to some 5 to 7 ski shops in the Baltimore-Washington area. Moreover, by giving the discounted rates to these hotels, they know that such would be included in the hotels' advertisements luring skiers to

both their hotel and Camelback. By their own admission, the Respondent works "hand in hand" with the hotels.

6. They also supplied their brochure to *Ski Resorts* magazine (Baltimore-Washington edition) which, in turn, disseminates the merits of skiing at Camelback to its readers or ski enthusiasts in this area. And, while Respondent claims to have no control over what *Ski Resorts* puts in its magazine, and did not pay for its advertising, they knew that as a "fairly important ski area" they would always be included in any such publication. Moreover, Respondents admit they supplied the information and gave permission to put the advertisement in the magazine. They wanted to be included in this local publication, and have been since its inception, for the express purpose of soliciting customers from Maryland.

7. That they prepare a group rate discount brochure which they disseminate to ski clubs and tour businesses to attract large groups of skiers. That Eastern Bus Tours has for some time advertised such trips to Camelback and other ski resorts in the area in the Washington Post and Evening Sun, precisely because of this incentive, and with the full knowledge of Camelback. [As the representative of Eastern Bus Tours stated, ". . . during the winter months, ski trips are one of the few tourist activities in this part of the country"].

8. That these brochures contain a map showing directions to Camelback via various interstates which starts (from the South) at Washington, D.C. and through Baltimore, giving time and distances from both.

9. That finally having saturated their destination market on weekends and holidays, they undertook, together with four major hotels, a new five state promotion (specifically including Maryland) for the '82-'83 season, geared toward increasing destination business during mid-week.

Clearly the lower court had more than sufficient facts to support its conclusion that the Respondent had purposefully entered the economic markets of this State for the express purpose of luring Maryland residents to its ski resort, and had successfully

done so by a pattern of regular solicitation over a number of years.

ARGUMENT

THE PURPOSE OF THE "MINIMUM CONTACTS" ANALYSIS OF THE DUE PROCESS CLAUSE IS TO INSURE "FAIR WARNING" TO A NON-RESIDENT DEFENDANT THAT HE IS SUBJECT TO SUIT THERE; AND WHERE ECONOMIC ACTIVITY IS INVOLVED, THE "FAIR WARNING" REQUIREMENT IS SATISFIED IF THE DEFENDANT PURPOSEFULLY INITIATES AND ESTABLISHES A REGULAR AND SUBSTANTIAL BUSINESS CONNECTION WITH THE ECONOMIC MARKETS OF A PARTICULAR STATE.

There is certainly no need here to recite the seminal holdings of this Court on the issue of personal jurisdiction. The case has already been remanded for further consideration in light of *Asahi Metal Industry Co.* v. *Superior Ct. of Calif.*, 480 U.S. , 107 S.Ct. 1026 (1987), and any decision based on the fact that this is not a "typical products liability case", not only ignores that directive, but runs afoul of this Court's consistent admonishment against using mechanical approaches to resolve the issue.

The Court's three separate opinions in *Asahi*, unanimously concur in the need to establish a regular and substantial business connection with the forum to sustain jurisdiction. The essential difference from the point of view of the plurality concerns only whether the quid pro quo rationale first announced in *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945) must still, under the particular facts of the case, be purposefully initiated by the Defendant. Here, the question of whether the Defendant's awareness of receiving a regular and substantial economic benefit, might also satisfy the purposeful availment requirement of *Hanson* v. *Denckla*, 357 U.S. 235 (1958) is not an issue. Camelback itself, "(e)schewing the option of operating an independent enterprise", most certainly reached beyond the borders of Pennsylvania to purposefully associate itself with a regional multistate market including Maryland, and very substantial benefits to

be derived therefrom. *Burger King*, 471 U.S. 462, 476 (1985). And while *Asahi*, may well be a products liability case, there is nothing in the Court's holding to suggest that the nature of the constitutional inquiry should not apply with equal force and effect to all multi-state businesses.

Certainly, *Worldwide Volkswagen* laid to rest forever, the notion that the state's interest in assuming jurisdiction over matters occurring within its borders, might override the Defendant's right to anticipate through his own purposeful conduct, having to defend a suit there. Indeed, to the extent the state's interest plays a part in the constitutional inquiry at all, it is not the presence of a product within the forum, but the Defendant's participation in the promotion or distribution of the product there that gives the multi-state commercial Defendant the "fair warning" necessary to sustain jurisdiction.

Logic would seem to dictate that the same degree of participation in either distributing a product to, or luring customers from, a clearly definable multi-state market (including the forum), as satisfying or not satisfying due process objections. Not so according to the Court of Appeals. Again, the Court insists that unless an operative fact essential to the cause of action for the negligent operation of its facilities in Pennsylvania occurs in Maryland (which is physically impossible) the constitutional predicate for an assertion of its specific jurisdictional powers is lacking. So narrow a view of specific jurisdiction cannot and should not be sustained on constitutional grounds.

This Court in *Burger King* has only recently defined the constitutionally protected right to "fair warning" in the context of a state's specific jurisdictional powers; and it does not suggest an absolute requirement that either the purposeful affiliating contact of the Defendant or an operative fact of the cause of action physically occur within the territorial borders of the forum.

> "Where a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there, this *fair warning* requirement is satisfied if the defendant has *purposefully directed* his activities at residents of the forum . . . and the litigation results from

> alleged injuries that *arise out of or relates to* those activities." 471 U.S. at 472.

This definition is certainly as flexible as the minimum contacts analysis it is intended to serve. But more importantly, it confirms that just as with products liability cases, it is not the single contact occurring in the forum, but rather the "substantial connection" established with the forum or its residents that is important. And so long as the cause of action arises out of that relationship, it has "fair warning" of possible injuries occurring there, regardless of where those injuries as a liability producing event first occur.

Again, it is the ability to anticipate through one's own purposeful conduct, the forum state's legitimate interest in any "substantial connection" that may result; and not the underlying facts of the particular dispute physically occurring there, that is essential to the constitutional inquiry. This was the crux of this Court's in holding *Worldwide Volkswagen.*

> "the foreseeability that is critical to due process . . . is that the defendant's *conduct and connection* with the forum state are such that he should reasonably anticipate being hailed into court there . . . " 444 U.S. at 297. [emphasis supplied]

In the present case, the Defendant admits that the Baltimore/Washington metropolitan area is within its "destination" market; and that market makes up a "substantial" portion of its overall business. To allow an essentially multi-state business operation to avoid suit in one of the states it admittedly seeks to serve, on the basis that it is not within its primary marketing area, begs the question. In both *Burger King* and *McGee* v. *International Life Insurance Co.* 355 U.S. 220 (1957), one phone call soliciting a business relationship with the resident of another state satisfied the purposeful availment test; and because it *also* created a "substantial connection" with the forum, it justified jurisdiction over the out-of-state defendant in a suit arising out of that relationship. Here, it is admitted that the defendant has solicited business within Maryland over a number of years and it has

produced a substantial secondary market with residents of the forum. Certainly, the defendant has "fair warning" of possible harm to residents of Maryland from the negligent operation of its facility in Pennsylvania.

The point remains, this Court has never held that specific jurisdiction would require that the plaintiff's cause of action arise out of conduct physically occurring within the forum. Indeed, the Court's opinion in *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408 (1984) takes great pains to dispel such an interpretation; and in *Burger King*, the Court reaffirms its prior holdings that physical contacts with the forum while possibly enhancing their relative significance are not a constitutional requirement.

The Court of Appeals decision in this case affects far more than the State of Maryland. Almost every state has a "doing business" statute which allows for an assertion of specific jurisdiction over an out-of-state commercial defendant who "regularly solicits" the business patronage of its citizens; and most like Maryland have interpreted the statute as co-extensive with the limits of due process. *See*, (A-16); and *Helicopteros*, 466 U.S. at 413. However, a significant minority of the courts in this country including Maryland have interpreted its reach as an assertion of the state's general (albeit limited) jurisdictional power. This approach confuses the jurisdictional analysis by enlisting an aggregate of the defendant's supposedly unrelated contacts with the forum to support general jurisdiction, while at the same time giving greater weight to those contacts having some relationship to the underlying dispute. An inherent problem with such an approach arises from the fact that while contacts needed to support general jurisdiction may well require a territorial component, specific jurisdiction does not. *See*, Twitchell, *The Myth of General Jurisdiction*, 101 Harv. L. Rev. 610, 630 (1988).

At the very least this decision imposes new limitations on a subject about which the Court has not definitively spoken. And it does so in the face of a national trend toward larger, costlier and

more strategically located fixed-site recreational and retail complexes serving multi-state markets. This case if heard would determine whether fixed-site commercial enterprises who "purposefully derive benefit" from their interstate activities, must submit to the jurisdiction of those states for consequences "proximately" arising from those activities, or whether "the Due Process Clause may [in these cases] . . . be wielded as a territorial shield to avoid interstate obligations . . . voluntarily assumed". *Burger King*, 471 U.S. at 474.

CONCLUSION

Where multi-state commercial activity is involved, it is the marketing relationship that establishes the defendant's "minimum contacts" with the forum state as to a cause of action "arising out of or relating to" the business enterprise regularly pursued or promoted there.

The Respondent by its own admission is operating in a regional multi-state area, insisting only that Maryland is not within its "primary" market. Again, by its own admission, this secondary market accounts for a "substantial" portion of its weekend and holiday business, as well as ten to twenty percent (10 to 20%) of its business mid-week. Clearly, the Respondent has included Maryland within the area it intentionally seeks to serve as a regional ski resort.

The Behnings have suffered and continue to suffer severe permanent damage in Maryland, as a result of this accident in Pennsylvania. Respondent's insistence that the "fixed-site" nature of its interstate business insulates it from suits for the negligent operation of those facilities, in states whose residents it seeks to serve and derive benefit, cannot be predicated upon Constitutional Due Process objections, and indeed would be "unfair". *Burger King*, 471 U.S. at 474.

For the reasons stated here, this Court should grant a Writ of Certiorari and summarily reverse the judgement below. In the alternative, Certiorari should be granted and this case scheduled for plenary review.

Respectfully submitted,

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DENNIS F. O'BRIEN
PHILIP O. FOARD
WHITE, MINDEL, CLARKE & HILL
29 West Susquehanna Avenue
Towson, Maryland 21204
(301) 828-1050

Attorneys for Petitioners
Ralph C. and Mary Behning

APPENDIX

APPENDIX A

539 A.2d 1107

CAMELBACK SKI CORPORATION

vs.

RALPH C. BEHNING et al

No. 32, Sept. Term, 1985.

Court of Appeals of Maryland.

April 11, 1988.

In *Camelback Ski Corp.* v. *Behning*, 307 Md. 270, 513 A.2d 874 (1986) (Camelback I), we held that the Due Process Clause of the Fourteenth Amendment precluded a Maryland court from exercising personal jurisdiction over the operator of a Pennsylvania ski resort under the particular facts of that case. Thereafter, the United States Supreme Court granted Respondents' petition for a writ of certiorari, and by summary order vacated the judgment and remanded the case to this Court for further consideration in light of *Asahi Metal Industry Co., Ltd.* v. *Superior Court of California*, U.S. , 107 S.Ct. 1026 (1987), a case decided one week earlier. *Behning* v. *Camelback Ski Corporation*, U.S. , 107 S.Ct. 1341 (1987). With the benefit of additional briefing and oral argument, we have reconsidered the case, and now affirm our earlier determination.

We reproduce from our earlier opinion a summary of the basic facts of this case:

> Ralph Behning, a Maryland resident, suffered severe and permanent injuries in February, 1980, when he fell while skiing at Camelback, a ski resort owned and operated by Camelback Ski Corporation (Camelback) and located in the Poconos mountains of Pennsylvania. In October, 1982, Behning and his wife sued Camelback in the Circuit Court for Baltimore County, claiming damages for alleged negligence of Camelback in the design, construction, maintenance, and "grooming" of one of its ski slopes, and in the failure to correct, or give adequate warning of, and unreasonably dangerous condition on the land.

* * *

> Camelback is a Pennsylvania corporation with no charter or license to do business in Maryland, and no agent for service of process in this State. No bank accounts or telephone listings are maintained by Camelback in Maryland, and no taxes are paid to this State. Camelback sells no products here and derives its total income from its ski resort in Pennsylvania. *Camelback I*, *supra*, at 272, 280.

Camelback also sought to purchase toll-free telephone numbers solely for its marketing area states, but found that service for Maryland was necessarily included in the package it was required to buy. Camelback included the Maryland toll-free number on its brochures, but it did not generally or systematically distribute its brochures in this State.[1]

Camelback is principally a "day"[2] resort, although it does receive some "destination business." Its market area, to which it devotes one hundred percent of its advertising budget, is comprised of those parts of Pennsylvania, New York, and New Jersey lying within a 100-mile radius of the resort. On one occasion in 1982, for a period of one or two days, a sales representative of Camelback called on travel agencies and military installations in Maryland, in an attempt to stimulate mid-week destination business. This effort was unsuccessful, and was not repeated.

Camelback was aware that some of its customers came from Maryland. The record does not disclose what percentage of Camelback's customers were from this State, or whether Camelback had any means of obtaining information concerning the State of residence of its customers. Behning's trip to Camelback did not result from any solicitation by Camelback within this State.

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1. On request, Camelback would mail its brochures to any ski shop requesting them. It received five or six requests a year from ski shops in Maryland.

2. This term refers to the fact that a majority of the resort's clientele comes to the area for a day of skiing and then returns home. In contrast, a "destination" resort is one which attracts skiers for extended periods of time. Camelback has no facilities for lodging guests. It has made available to some local hotels and motels discount ski lift tickets, but it has not participated in the advertising efforts of those establishments.

Asahi Metal Industry Co. Ltd. v. *Superior Court*, *supra*, was a successful challenge to a California state court's exercise of personal jurisdiction in a controversy that ultimately involved only Japanese and Taiwanese corporations. The action was initiated by a California resident who was injured as the result of a motorcycle accident. Alleging that the accident was caused by a sudden loss of air from the rear tire of his motorcycle, the plaintiff sued, among others, Cheng Shin Rubber Industrial Co., Ltd. (Cheng Shin), the Taiwanese manufacturer of the tire tube. Cheng Shin in turn filed a complaint for indemnification against Asahi Metal Industry Co. Ltd., (Asahi), the Japanese manufacturer of the tube's valve assembly. Asahi moved to quash service of Cheng Shin's summons, arguing that California could not exercise jurisdiction over Asahi consistent with the Due Process Clause of the Fourteenth Amendment. Asahi's motion was considered after all claims other than that of Cheng Shin against Asahi had been resolved.

The facts show that Asahi manufactured valve assemblies in Japan and sold them to Cheng Shin, among others. Cheng Shin accepted delivery of the valve assemblies in Taiwan, and there manufactured the finished tube. Cheng Shin purchased valve assemblies from other suppliers as well, and sold finished tubes throughout the world. Although Asahi had no control over Cheng Shin's system of distribution, there was evidence that Asahi knew that some of the valve assemblies sold to Cheng Shin would be incorporated into tire tubes which would ultimately be sold in California.

The Supreme Court analyzed the facts of *Asahi* with respect to two separate but related questions. First, the Court considered, and divided sharply on, the question of whether Asahi had sufficient contacts with California to justify that State's assumption of personal jurisdiction over this type of claim. Second, the Court considered whether, under all the circumstances, assumption of jurisdiction by the State court would offend traditional notions of fair play and substantial justice. Eight justices, after considering

the factors set forth in *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286 (1980), agreed that even if the threshold test of minimum contacts had been met, the exercise of jurisdiction would not be fair or reasonable.

> Considering the international context, the heavy burden on the alien defendant, and the slight interests of the plaintiff and the forum State, the exercise of personal jurisdiction by a California court over Asahi in this instance would be unreasonable and unfair.
> *Asahi*, *supra*, 107 S.Ct. at 1035.

The specific holding of *Asahi* has no direct impact on our decision in this case. *Asahi* is "one of those rare cases" in which traditional notions of fair play and substantial justice defeat the reasonableness of jurisdiction even though the threshold requirement of minimal contacts may have been met. 107 S.Ct. at 1035 (Brennan, J., concurring in part). We held in *Camelback I* that there were insufficient contacts to satisfy the threshold test of juridiction. Although we did not specifically address the second and more general test of essential fairness under all the circumstances, we noted that several of the factors applied in that analysis militated in favor of the exercise of jurisdiction. We stated, however, that those factors "cannot alone serve as the foundation for assumption of jurisdiction." *Camelback*, 307 Md. at 286.

We turn, then, to the Supreme Court's extensive discussion of what is ordinarily the first question in personal jurisdiction cases[3] —the nature and extent of contacts that must be shown between the forum and the defendant to satisfy the threshold demands of fairness. *Asahi* may be characterized as a "stream of commerce" case. It involves a manufacturer placing a component part into the stream of commerce, and an allegation that a consumer of the

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3. Although we find it convenient to speak of the contacts analysis as the first, or threshold, inquiry, and recognize that in the great majority of cases this analysis will control the outcome of the jurisdiction question, we observe, as did Justice Stevens in his concurring opinion in *Asahi*, that where jurisdiction is rather clearly precluded by the overall fairness analysis it may be neither necessary nor desirable to engage in the contacts analysis.

product was injured because the component was unreasonably dangerous when sold.

Four justices were of the opinion that if there exists a "regular and anticipated flow of products from manufacture to distribution to retail sale," a participant in that process who "is aware that the final product is being marketed in the forum State" has sufficient contacts with the forum to satisfy the threshold jurisdictional inquiry. 107 S.Ct. at 1035 (Brennan, J., concurring in part). The rationale of that position is that "[a] defendant who has placed goods in the stream of commerce benefits economically from the retail sale of the final product in the forum State, and indirectly benefits from the State's laws that regulate and facilitate commercial activity." *Id.* Participation in an ongoing stream of commerce with full awareness of ultimate sales in the forum State is therefore considered to be an "act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State," thus satisfying the test of *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 475 (1985), and *Hanson* v. *Denckla*, 357 U.S. 235, 253 (1958).

Four other justices were of the opinion that simply placing a product into the stream of commerce under circumstances where it was foreseeable that sales would result in the forum jurisdiction did not satisfy the threshold requirement of sufficient contacts. The plurality said:

> The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State... [A] defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State. *Asahi*, *supra*, 107 S.Ct. at 1033.

The ninth justice, Justice Stevens, eschewed any need to articulate in *Asahi* a test to be applied in stream-of-commerce cases, but added that even if something more than "mere awareness" is

needed to constitute "purposeful availment," the Asahi corporation's activities may have satisfied the required higher quantum of conduct.[4] 107 S.Ct. at 1038.

The case before us is neither a product liability case, nor a conventional stream-of-commerce case. As the Behnings point out, however, this case shares at least one very important feature of the stream-of-commerce cases—the defendant knowingly and regularly derives economic benefit from the business of residents of the forum State.

The Behnings correctly assert that forcing all cases into a rigid classification as either "general jurisdiction" or "specific jurisdiction" cases, and then mechanically applying a fixed standard for the quantum of contacts required to support personal jurisdiction in each class, would be inappropriate. We agree that the quality and quantity of contacts required to support the exercise of personal jurisdiction will depend upon the nature of the action brought and the nexus of the contacts to the subject matter of the action. We further agree that the spectrum of cases may be generally divided into those involving general jurisdiction (the cause of action is unrelated to the contacts), and those involving specific jurisdiction (the cause of action arises out of the conduct which constitutes the contacts). Generally speaking, when the cause of action does not arise out of, or is not directly related to, the conduct of the defendant within the forum, contacts reflecting continuous and systematic general business conduct will be required to sustain jurisdiction. *Helicopteros Nacionales de Colombia* v. *Hall*, 466 U.S. 408 (1984); *Hanson* v. *Denckla*, *supra*, 357 U.S. at 251; *Camelback I*, *supra*, 307 Md. at 279-80. On the other hand, when the cause of action arises out of the contacts that the defendant had with the forum, it may be entirely fair to permit the exercise of jurisdiction as to that claim.

Some cases fit neatly into one or the other category. *Asahi* was clearly a specific jurisdiction case—the cause of action arose out

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4. Justice Stevens suggests that the duration and regularity of the course of dealings, together with the volume, the value, and the hazardous character of the product must be taken into consideration. *Asahi*, *supra*, 107 S.Ct. at 1038 (Stevens, J., concurring in part).

of the only contact that Asahi had with the forum State. Similarly, *McGee* v. *International Life Ins. Co.*, 355 U.S. 220 (1957), involved a claim arising out of the issuance and delivery of a single life insurance policy by a Texas insurance company to a California resident, and was therefore a case involving specific jurisdiction. By way of contrast, *Perkins* v. *Benguet Mining Co.*, 342 U.S. 437 (1952), involved a cause of action that did not arise out of, or relate to, the activities of the defendant in the forum State, and was therefore a general jurisdiction case. The concept of specific and general jurisdiction is a useful tool in the sometimes difficult task of detecting how much contact is enough, and most cases will fit nicely into one category or the other. If, however, the facts of a given case do not naturally place it at either end of the spectrum, there is no need to jettison the concept, or to force-fit the case. In that instance, the proper approach is to identify the approximate position of the case on the continuum that exists between the two extremes, and apply the corresponding standard, recognizing that the quantum of required contacts increases as the nexus between the contacts and the cause of action decreases.

This case does not fit the classic mold of specific jurisdiction, and we find that the contacts required to support jurisdiction more nearly resemble those of a general jurisdiction case. Behning was not injured by any product Camelback sent into Maryland. There is no evidence that Behning went from Maryland to Pennsylvania in response to solicitation by Camelback. Yet, the Behnings argue the cause of action is not totally divorced from the contacts they rely upon, because Behning was one of a number of Maryland residents coming to Camelback to ski, and thus formed a part of a stream-of-commerce from which Camelback knew it derived economic advantage. The argument, though innovative, is not persuasive.

In the context of determining what is fair for purposes of jurisdiction, a significant difference exists between regularly placing goods into a stream-of-commerce with knowledge they will be sold in another state on the one hand, and knowingly accepting

the economic benefits brought by interstate customers on the other hand. Ordinarily, one who purposefully sends[5] a product into another jurisdiction for purposes of sale may reasonably expect to be haled into court in that State if the product proves to be defective and causes injury there. In addition to having caused a direct injury within the forum State, that manufacturer or distributor has purposefully availed himself of the laws of the forum State that regulate and facilitate such commercial activity. The same cannot be said of the fixed-site merchant who is simply aware that a portion of his income regularly is derived from the patronage of customers coming from other states. The owner of a South Carolina motel located near Interstate Route 95, for example, may know that a significant portion of his income is derived from residents of New York traveling to and from Florida, but that fact alone should not require that he be forced to litigate in New York a suit brought by a patron who claims injury as a result of a fall in the South Carolina motel.[6] Although he may cause an indirect impact on the forum State by injuring one of its residents, he causes no direct injury in the State, and does not avail himself of the protection or assistance of its laws.

Concededly, Camelback's involvement with Maryland is more than mere awareness that some part of its income is regularly derived from the patronage of citizens of this State. Camelback was aware that others, for their own economic purposes, were publicizing the Camelback resort within the Washington and Baltimore metropolitan areas; that wire services routinely carried information concerning snow conditions on its slopes and that this

5. Resolution of the case before us does not require that we express our views concerning the circumstances from which "purposeful availment" might properly be inferred, or even presumed, in a typical stream-of-commerce case.

6. Compare *Markopoulos* v. *Walt Disney World*, 221 N.J. Super 513, 535 (1987), holding that a sufficient amount of solicitation by media advertising directed to New Jersey, coupled with the fact that the plaintiff travelled to Florida in response to the solicitation, may support jurisdiction in New Jersey courts of a claim that plaintiff was injured in Florida when assaulted by Mickey Mouse.

information was reproduced in Maryland newspapers; that Maryland residents could, and probably were, using a toll-free telephone number to obtain information concerning snow conditions at the resort; and, that a small number of its brochures were occasionally requested by Maryland ski shop owners for distribution to their customers. On the other hand, Camelback did not devote its energy or financial resources to the marketing of Maryland. It allocated no part of its advertising budget to Maryland, and following one very brief and unsuccessful attempt to solicit business in this State in 1982, it abandoned any attempt to include Maryland in its primary marketing area, or to conduct any active solicitation here.

In examining Camelback's contacts with Maryland to determine whether they were sufficient to satisfy the threshold test for jurisdiction, we think it appropriate also to consider the several factors the Supreme Court has identified in connection with the second stage test of overall fairness. As we noted earlier, although it is convenient to speak of the two analyses as separate steps, the "threshold" step is not considered in a vacuum, nor must it invariably be the first step. Where the fairness factors of the second step militate strongly in favor of the exercise of jurisdiction, a lesser showing of minimum contacts than would otherwise be required might suffice. See, *Burger King*, *supra*, 471 U.S. at 476-77, and Perdue, *Sin, Scandal, and Substantive Due Process: Personal Jurisdiction and Pennoyer Reconsidered*, 62 Wash.L.Rev. 479, 518-19 (1987). The relevant factors include: the burden on the defendant; the interests of the forum State; the plaintiff's interest in obtaining relief; the interstate judicial system's interest in obtaining the most efficient resolution of controversy; and the shared interest of the several states in furthering fundamental substantive social policies. *Asahi*, *supra*, 107 S.Ct. at 1034.

The plaintiffs here clearly have a significant interest in obtaining relief, but in this respect we note that the plaintiffs could have maintained this action in Pennsylvania without suffering unreasonable inconvenience. This State has an interest in

providing a forum for its injured citizens, but we must also recognize the legitimate interests and expectations of, Camelback, a resident corporation of Pennsylvania. The burden imposed upon the defendant by requiring it to litigate this case in Maryland would not be extreme—but, as with the plaintiff being required to litigate in Pennsylvania, there would be some burden.

Our consideration of the "fairness" factors persuades us that: 1) if Camelback had had additional contacts with Maryland sufficient to satisfy the "minimum contacts" test for a threshold determination in favor of the exercise of jurisdiction over this cause of action, consideration of the factors in the second stage test probably would not result in an ouster of jurisdiction; and 2) to the extent our consideration of these factors would color our judgment at all concerning the quantum of contacts required to be shown, it would operate slightly in favor of the claim that Maryland should exercise jurisdiction.

With this in mind, we return to a consideration of whether, under all the circumstances, there has been a sufficient showing of contacts in this case. Recognizing that shades of grey predominate in this often difficult task of balancing interests and relevant factors on the scale of fairness, we again conclude that the conduct of Camelback does not mount up to the "purposeful availment" of the benefits or laws of this State that will satisfy the threshold test of minimum contacts mandated by the Due Process Clause, nor do we find that the conduct of Camelback was such that it could have expected to be haled into the courts of Maryland to answer a claim of this kind. We affirm our earlier determination.

JUDGMENT OF THE COURT OF SPECIAL APPEALS REVERSED AND CASE REMANDED TO THAT COURT WITH INSTRUCTIONS TO AFFIRM THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY. RESPONDENTS TO PAY THE COSTS.

APPENDIX B

SUPREME COURT OF THE UNITED STATES

No. 86-839

Ralph C. Behning, *et ux.*,

Petitioners,

v.

Camelback Ski Corporation

ON WRIT OF CERTIORARI to the Court of Appeals of Maryland.

THIS CAUSE having been submitted on the petition for a writ of certiorari and response thereto,

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that the judgment of the above court in this cause is vacated with costs, and that this cause is remanded to the Court of Appeals of Maryland for further consideration in light of *Asahi Metal Industry Co., Ltd.* v. *Superior Court of California*, 480 U.S. (1987)

IT IS FURTHER ORDERED that the petitioners, Ralph C. Behning, et ux., recover from Camelback Ski Corporation Two Hundred Dollars ($200.00) for their costs herein expended.

March 2, 1987

Clerk's costs: $200.00

UNITED STATES OF AMERICA, ss:

THE PRESIDENT OF THE UNITED STATES
OF AMERICA

To the Honorable the Judges of the Court of Appeals of Maryland.

GREETINGS:

WHEREAS, lately in the Court of Appeals of Maryland, there came before you a cause between Camelback Ski Corporation and Ralph C. Behning, et al., No. 32, Sept. Term, 1985, wherein the judgment of the said Court of Appeals was duly entered on the twenty-fifth day of August, 1986, as appears by an inspection of the petition for writ of certiorari and response thereto.

AND WHEREAS, in the 1986 Term, the said cause having been submitted to the SUPREME COURT OF THE UNITED STATES on the said petition for writ of certiorari and response thereto, and the Court having granted the said petition.

ON CONSIDERATION WHEREOF, it was ordered and adjudged on March 2, 1987, by this Court that the judgment of the said Court of Appeals in this cause was vacated with costs, and that this cause was remanded to the Court of Appeals of Maryland for further consideration in light of *Asahi Metal Industry Co., Ltd.* v. *Superior Court of California*, 480 U.S. (1987).

IT IS FURTHER ORDERED that the petitioners, Ralph C. Behning, et ux., recover from Camelback Ski Corporation Two Hundred Dollars ($200.00) for their costs herein expended.

NOW, THEREFORE, THE CAUSE IS REMANDED to you in order that such proceedings may be had in the said cause, in conformity with the judgment of this Court above stated, as accord with right and justice, and the Constitution and Laws of the United States.

Witness the Honorable WILLIAM H. REHNQUIST, Chief Justice of the United States, the 1st day of April in the year of our Lord one thousand nine hundred and eighty-seven.

Costs of Ralph C. Behning, et ux.

Clerk's costs: $200.00

/s/
Clerk of the Supreme Court
of the United States

No. 86-839

RALPH C. BEHNING, *et ux.*

v.

CAMELBACK SKI CORPORATION

APPENDIX C

513 A.2d 874

CAMELBACK SKI CORPORATION

vs.

RALPH C. BEHNING et al

307 Md. 270 (1985)

Court of Appeals of Maryland.

August 25, 1986.

Argued before MURPHY, C.J., and SMITH*, ELDRIDGE, COLE, RODOWSKY, COUCH and MCAULIFFE, JJ.

MCAULIFFE, Judge.

We granted certiorari in this case to determine whether a Pennsylvania corporation operating a ski resort in that state had sufficient contacts with Maryland to justify this State's exercise of "long arm" personal jurisdiction over it in a tort action that neither arose out of nor was directly related to the activities of the foreign corporation within this State. We hold it did not.

Ralph Behning, a Maryland resident, suffered severe and permanent injuries in February, 1980, when he fell while skiing at Camelback, a ski resort owned and operated by Camelback Ski Corporation (Camelback) and located in the Poconos mountains of Pennsylvania. In October, 1982, Behning and his wife sued Camelback[1] in the Circuit Court for Baltimore County, claiming damages for alleged negligence of Camelback in the design, construction, maintenance, and "grooming" of one of its ski slopes, and in the failure to correct, or give adequate warning of, an unreasonably dangerous condition on the land. Camelback was

*Smith, J., now retired, participated in the hearing and conference of this case while an active member of this Court; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and adoption of this opinion.

1. Appellees also sued Camelback Associates, Inc., a separate corporation that had developed and sold condominium units or land adjoining the ski resort. Judgment was entered in favor of that corporation pursuant to its motion for summary judgment, and no appeal was taken from that judgment.

served with original process in Pennsylvania, and following an unsuccessful attempt to remove the action to the United States District Court for the District of Maryland, Camelback filed a motion raising preliminary objection, seeking dismissal for lack of jurisdiction.[2] By its motion, Camelback contended it had not regularly done or solicited business in Maryland, nor engaged in any other persistent course of conduct here, nor had any substantial contacts with this State. Thus, it argued, personal jurisdiction could not properly be asserted under Maryland's long arm statute, Maryland Code (1974, 1984 Repl. Vol., 1985 Cum. Supp.) Sections 6-101–6-103 of the Courts and Judicial Proceedings Article, or be consistent with the requirements of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

The motion was considered by Judge James Sfekas on the pleadings, affidavits, discovery documents, and arguments of the parties. Judge Sfekas found the existence of certain contacts between Camelback and this State, and initially determined that these contacts were sufficient to support jurisdiction. Upon reconsideration, however, he was persuaded that the contacts, while sufficient to satisfy the statutory requirement for long arm jurisdiction, were "insufficient to satisfy the requirements of due process where the injury or tortious act occur[red] outside the state," and he dismissed the action. The Behnings appealed and the Court of Special Appeals reversed, holding that the contacts found by the trial judge were sufficient to satisfy the requirements of due process. *Behning* v. *Camelback Ski Corp.*, 61 Md.App. 11, 484 A.2d 646 (1984).

The parties agree that under the facts of this case the applicable portion of the long arm statute is sec. 6-103(b)(4), which provides:

(b) *In general.*—A court may exercise personal jurisdiction over a person, who directly or by an agent;

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2. The motion alternatively asked that service of process be quashed because of alleged procedural deficiencies. That issue was determined adversely to Appellant in the trial court, and has not been pursued on appeal.

(4) Causes tortious injury in the State or outside of the State by an act or omission outside the State if he regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from goods, food, services, or manufactured products used or consumed in the State[.] Appellees' contention in this case is that Camelback "regularly does or solicits business . . . in the state." They do not suggest that Camelback engages in any other persistent course of conduct in Maryland, and they concede that Camelback does not derive revenue from anything used or consumed in this State.

[1] This Court has consistently stated that the intent of the legislature in enacting Maryland's long arm statute was to expand the exercise of personal jurisdiction to the limits allowed by the Due Process Clause of the Fourteenth Amendment to the Federal Constitution. *Mohamed* v. *Michael*, 279 Md. 653, 657, 370 A.2d 551 (1977); *Geelhoed* v. *Jensen*, 277 Md. 220, 224, 352 A.2d 818 (1976); *Krashes* v. *White*, 275 Md. 549, 558-59, 341 A.2d 798 (1975); *Lamprecht* v. *Piper Aircraft Corp.*, 262 Md. 126, 130, 277 A.2d 272 (1971); *Harris* v. *Arlen Properties*, 256 Md. 185, 195-96, 260 A.2d 22 (1969); *Vitro Electronics* v. *Milgray*, 255 Md. 498, 504-05, 258 A.2d 749 (1969); *Gilliam* v. *Moog Industries*, 239 Md. 107, 111, 210 A.2d 390 (1965); *Marriott Corp.* v. *Village Realty & Inv.*, 58 Md.App. 145, 154, 472 A.2d 510 (1984). We have held that the legislative purpose in the enactment of the long arm statute was, to a great degree, "the expansion of judicial jurisdiction up to but not beyond the outermost limits permitted in this area by the due process decisions of the Supreme Court." *Lamprecht* vs. *Piper Aircraft Corp.*, *supra*, 262 Md. at 130, 277 A.2d 272.

The basic standard to be applied in determining whether this State may exercise personal jurisdiction over Camelback is whether that corporation has "certain minimum contacts with [Maryland] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co.* vs. *Washington*, 326 U.S. 310, 316, 66 S.Ct.

154, 158, 90 L.Ed. 95 (1945). As the Supreme Court acknowledged in *Kulko* vs., *California Superior Court*, 436 U.S. 84, 92, 98 S.Ct. 1690, 1696, 56 L.Ed.2d 132 (1978), this standard is not susceptible of mechanical application, and the facts of each case must be weighed to determine whether the requisite "affiliating circumstances" are present:

> We recognize that this determination is one in which few answers will be written "in black and white. The greys are dominant and even among them the shades are innumerable." *Kulko, supra*, 436 U.S. at 92, 98 S.Ct. at 1696 (citation omitted).

Following its decision in *International Shoe*, the Supreme Court, in a series of cases, further developed the standards applicable to a state court's exercise of personal jurisdiction. In *Perkins* vs. *Benguet Mining Co.*, 342 U.S. 437, 72 S.Ct. 413, 96 L.Ed. 485 (1952), the Court considered the propriety of Ohio's exercise of jurisdiction over a Philippine mining corporation in a suit brought by a nonresident of Ohio. The corporation had been carrying on a continuous and systematic, but limited, part of its general business in Ohio. The president of the corporation was served with summons in Ohio while he was engaged in corporate business there. The cause of action sued upon did not arise in Ohio and did not relate to the corporation's activities there. The Court held that the Fourteenth Amendment left Ohio free to take or decline jurisdiction over the corporation. Despite the fact that the cause of action in *Perkins* was not related to the corporation's activities in Ohio, the Court noted that if a corporation carried on "continuous and systematic" corporate activities in a forum state, those activities would be sufficient to make it fair and reasonable to subject that corporation to proceedings *in personam* even though the cause of action was unrelated to the defendant's activities in that state. 342 U.S. at 445-49.

The Court further expanded the flexibility of the doctrine of personal jurisdiction in *McGee* vs. *International Life Ins. Co.*, 355 U.S. 220, 78 S.Ct. 199, 2 L.Ed.2d 223 (1957). In *McGee*, the Court ruled unanimously that the issuance and delivery of a

single life insurance policy by a Texas insurance company to a California resident (who paid the premiums by mail) gave the California courts the power to exercise jurisdiction in a beneficiary's suit for the policy proceeds. The Court noted that the trend of expanding the scope of state jurisdiction over foreign corporations and other nonresidents was "attributable to the fundamental transformation of our national economy over the years." 355 U.S. at 222, 78 S.Ct. at 200. Although the insurance company had never maintained an office or agent in California and there was no evidence to show that it had ever solicited or done any other insurance business in California, the Court stated that the elements of due process had been satisfied:

> It is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with the State. The contract was delivered in California, the premiums were mailed from there and the insured was a resident of that State when he died. It cannot be denied that California has a manifest interest in providing effective means of redress for its residents when their insurers refuse to pay claims.
> *Id.* at 223, 78 S.Ct. at 201 (citations omitted).

Despite a clear emphasis in *McGee* that personal jurisdiction could be upheld on the basis of very minimal contacts with the forum state, the Court, later in the same term, demonstrated that there were limits beyond which due process could not be stretched. In *Hanson* vs. *Denckla*, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed2d 1283 (1958), the Court overturned Florida's exercise of jurisdiction over a Delaware bank. The complex fact situation in *Hanson* concerned a Pennsylvania resident who executed a trust instrument in Delaware, naming a Delaware bank as trustee. The Pennsylvania resident reserved a power of appointment over the remainder of the trust for herself and subsequently moved to Florida and purportedly exercised her power of appointment over the trust while in Florida. Upon her death the residuary legatees of the will brought suit in Florida for the rights to the remainder of the trust. A sharply divided Supreme Court

reversed a Florida court's invalidation of the Delaware trust and its assertion of jurisdiction over the Delaware trustee, noting that the Delaware trustee did not have even those minimal contacts with Florida that were a prerequisite to a state's exercise of power over a party. Therefore, the Court concluded that jurisdiction over the trustee (an indispensable party to the action) had not been obtained. While the Court in *Hanson* recognized the trend of expanding personal jurisdiction over nonresidents begun by the *International Shoe* case, it also emphasized a need for the exercise of restraint and said:

> [I]t is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States. However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the "minimal contacts" with that State that are a prerequisite to its exercise of power over him. 357 U.S. at 251, 78 S.Ct. at 1238 (citations omitted).

In applying the minimum contacts rule in *Hanson*, the Court noted that a defendant's contact with a forum state would vary with the quality and nature of the defendant's activity, and stated that:

> [I]t is essential in each case that there be some act by which the defendant *purposefully avails* itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws. 357 U.S. at 253, 78 S.ct. at 1239 (emphasis added) (citations omitted).

Nearly twenty years passed before the Supreme Court again spoke in this area of the law. In *Shaffer* vs. *Heitner*, 433 U.S. 186, 97 S.Ct. 2569, 53 L.Ed.2d 683 (1977), the Court held that

assertions of *in rem* state-court jurisdiction must satisfy due process requirements in the same manner as assertions of *in personam* jurisdiction, and that the "central concern" must be on "the relationship among the defendant, the forum, and the litigation." 433 U.S. at 204, 97 S. Ct. at 2579.

Shortly thereafter, the Court considered *Kulko* vs. *California Superior Court, supra*, and *World-Wide Volkswagen Corp.* vs. *Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980). In each case, the Court found the contacts between the defendant and the forum state to be insufficient to support the assumption of personal jurisdiction. In *World-Wide Volkswagen* the Court pointed out that the "minimum contacts" standard performs two related, but distinguishable functions. "It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to insure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *Id.* at 292, 100 S.Ct. at 564. Drawing from the earlier teachings of *Hanson* vs. *Denckla, supra*, the Court said:

> Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment. *Id.* at 294, 100 S.Ct. at 565.

More recently, the Supreme Court has addressed the issue of long arm jurisdiction in four cases: *Keeton* vs. *Hustler Magazine, Inc.*, 465 U.S. 770, 104 S.Ct. 1473, 79 L.Ed.2d 790 (1984); *Calder* vs. *Jones*, 465 U.S. 783, 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984); *Helicopteros Nacionales de Columbia, S.A.* vs. *Hall*, 466 U.S. 408, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984); and *Burger King Corp.* vs *Rudzewicz*, U.S. , 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985). In *Keeton*, New Hampshire's claim of

personal jurisdiction over the publisher of *Hustler* magazine in a libel case was predicated upon a showing of sales activity within the state.[3] Noting that the contacts of Hustler Magazine, Inc. with New Hampshire were less than those shown to have existed between the defendant corporation and the forum state in *Perkins* vs. *Benguet Mining Co., supra*, and that Hustler's activities in the forum may not be so substantial as to support jurisdiction over a cause of action unrelated to those activities," the Court nevertheless upheld jurisdiction because the cause of action arose out of the very activity that was being conducted, in part, in New Hampshire.

The concept of requiring more substantial contacts to support a claim of jurisdiction in a suit not arising out of or related to the defendant's contacts with the forum (general jurisdiction) than in a suit that does arise out of or is related to those contacts (specific jurisdiction) was not a novel one. In *Hanson* vs. *Denckla, supra*, 357 U.S. at 251, 78 S.Ct. at 1238, the Court made a similar comparison:

> The cause of action in this case is not one that arises out of an act done of transaction consummated in the forum State. In that respect, it differs from *McGee* vs. *International Life Ins. Co.* . . . and the cases there cited.

See also Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 Sup.Ct.Rev. 77, 80-88; and von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv.L.Rev. 1136 (1966). The nature and importance of the distinction to be drawn between an assertion of general jurisdiction and an assertion of specific jurisdiction were more fully discussed by the Court in *Helicopteros Nacionales de Columbia, S.A., supra*. There, the Court made it clear that unlike the specific jurisdiction case of *McGee* vs. *International Life Ins. Co., supra*, where a single transaction was sufficient to support jurisdiction, the required showing in general jurisdiction cases must be "the kind of continuous and systematic

3. The evidence showed monthly sales of ten thousand to fifteen thousand copies of *Hustler* magazine within New Hampshire.

general business contacts the Court found to exist in *Perkins*." 466 U.S. at 416, 104 S.Ct. at 1873. Professor James concluded that if "plaintiff's injury does not arise out of something done in the forum state, then other contacts between the corporation and the state must be *fairly extensive* before the burden of defending a suit there may be imposed upon it without offending "traditional notions of fair play and substantial justice.'" F. James, *Civil Procedure* 640 (1965) (emphasis added). The Restatement (Second) of Conflict of Laws (1971) incorporates this concept at Sec. 47(2):

> A state has power to exercise judicial jurisdiction over a foreign corporation which does business in the state with respect to causes of action that do not arise from the business done in the state if this business is so continuous and substantial as to make it reasonable for the state to exercise such jurisdiction.

[2] We turn to a consideration of the particular facts of this case, and an evaluation of the contacts shown to have existed between Camelback and this State. Camelback is a Pennsylvania corporation with no charter or license to do business in Maryland, and no agent for service of process in this State. No bank accounts or telephone listings are maintained by Camelback in Maryland, and no taxes are paid to this State. Camelback sells no products here and derives its total income from its ski resort in Pennsylvania.

Camelback's primary marketing area consists of eastern Pennsylvania, the New York City metropolitan area, and northern New Jersey, and it is to this market that Camelback directs its advertising efforts. Camelback has not allocated or expended any of its funds for the purchase of advertising in Maryland.

On the other hand, Camelback has engaged in some solicitation of business within this State, and has provided information to publishers of trade magazines with knowledge that such information would be disseminated in Maryland. Additionally, Camelback has, on occasion and upon request, sent its brochures to ski shops within this State, and it maintains a toll-free telephone

number which may be used by anyone in this State to obtain recorded information concerning ski conditions at the resort. It is the character, quality, consistency, and cause of these contacts that we must examine to determine whether they are sufficient, and of such a continuous and systematic nature as will support the assertion of personal jurisdiction over Camelback.

We first consider the active solicitation of business within this State. The record discloses that Camelback is primarily a "day"[4] resort, although it does receive some "destination" business. Its primary market area is therefore comprised of those parts of Pennsylvania, New York and New Jersey lying within a 100 mile radius of the resort. On one occasion in 1982, in an effort to develop a secondary market, Camelback sent a sales representative into the Washington metropolitan area. This solicitation was for the purpose of developing mid-week business, and was apparently undertaken in cooperation with local hotels and motels. The sales representative visited travel agencies, and attempted to stimulate interest in the booking of mid-week "destination" business by offering a ten percent commission to the travel agents. Camelback's sales representative spent several days in Virginia, and in passing through Maryland visited ten or eleven travel agencies and one or two military installations. Having no current brochures, the representative secured the business card of any agent indicating an interest, and thereafter mailed current brochures to those agents. Camelback characterized this as an "exploratory trip" to determine the feasibility of expanding its market. It concluded that the venture was a "bomb" in terms of generating business for its ski resort from Maryland residents. No Maryland travel agents ever took advantage of the ski/stay package and the record indicates that no commission was ever paid to any travel agency in Maryland. Camelback asserts that the failure of this isolated trip to generate new business served to

4. This term refers to the fact that a majority of the resort's clientele comes to the area for a day of skiing and then returns home. In contrast, a "destination" resort is one which attracts skiers for extended periods of time.

reinforce its long standing policy of restricting its solicitation efforts to its primary market area.

We are not persuaded that Camelback's sending of a representative to Maryland on a one day trip amounts to more than a contact of an isolated nature. It does not amount to the "regular" solicitation of business or to a "persistent course of conduct" in this State within the contemplation of Sec. 6-103(b)(4), nor is it a contact of a "continuous and systematic" nature sufficient to satisfy the requirements of due process in a general jurisdiction case.

The trial judge also found that Camelback had contact with Maryland because of its "[d]issemination of information (to advertise) in national and regional publications." The evidence is uncontradicted that Camelback did not purchase advertising in publications intended for distribution in Maryland. Appellees did introduce evidence that information concerning Camelback had appeared in newspapers and magazines having a general circulation in Maryland, but there was no evidence that Camelback requested, paid for, or was even aware of the advertisements. To the contrary, the record showed that tour companies would offer package ski trips to a number of different resorts, and Camelback would be listed as one of the options. Camelback did offer a discount to any group of twenty or more persons, but it did not participate in the formation of the group or contribute in any way to the preparation or publication of the advertisements. Information concerning the facilities at Camelback would also appear from time to time in magazine and newspaper articles published in Maryland. Information for such articles could have been obtained as a result of a visit to the facility by the author, or by consulting a national publication that provides descriptive information concerning all major ski resorts, or by calling Camelback and requesting the information.

It appears that in finding a contact with Maryland through advertising efforts, the trial judge relied primarily on Camelback's listing"[5] in *Ski Resorts* magazine, a commercial publication intended for distribution in Washington, Baltimore, and vicinity. Camelback neither sought nor paid for this listing. An affidavit filed by the publisher of the magazine shows that the information was obtained, and the listing written, by magazine staff members at no charge to the ski resort. In the affidavit, the publisher stated that Camelback "has never purchased advertising of any kind in the Baltimore-Washington edition of *'Ski Resorts'*, despite . . . annual attempts to sell such space."[6]

The information for the listing in *Ski Resorts* magazine, although available from other sources, was in fact furnished by Camelback. The staff of the magazine sent a request for information, and this was completed and returned by Camelback.

We agree generally with the recent observations of the Fourth Circuit Court of Appeals that "[j]urisdiction may not be manufactured by the conduct of others," and "[t]he significant contacts considered are those actually generated by the defendant." *Chung* vs. *Nana Development Corp.*, 783 F.2d 1124, 1127 (4th Cir. 1986). However, we do not accept Camelback's suggestion that the listings must be disregarded entirely because they do not constitute paid advertisements. Camelback's direct participation in providing information to *Ski Resorts* magazine with knowledge that a listing would be published in a magazine enjoying general publication in this State constitutes a contact with this State, but under the circumstances we cannot characterize it as conduct by which "the defendant purposefully avail[ed] itself of the privilege of conducting activities within [this State], thus invoking the benefits and protections of its laws." *Hanson vs. Denckla, supra,* 357 U.S. at 253, 78 S.Ct. at 1239.

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5. Such a "listing," as opposed to placing an advertisement, provides straight-forward factual information about a ski area such as trail layouts, rates, location and travel time.

6. The evidence did show that Camelback has purchased advertising in the Philadelphia edition of *Ski Resorts* magazine, a publication intended for distribution in Camelback's primary marketing area.

Judge Sfekas found as an additional contact the "maintenance of a toll free phone number for Maryland residents." The record discloses that Camelback maintained two toll-free telephone numbers for the purpose of providing reports of current ski conditions without charge to callers. However, the evidence in uncontroverted that Camelback did not set out to purchase a toll-free number for use by Maryland residents, but rather found that the purchase of the service for states within its primary marketing area automatically included service for Maryland, as well as other states outside that area. It is true that Camelback's brochures included the toll-free numbers, together with a listing of the states in which they could be used, including Maryland. However, as we shall discuss more fully *infra*, these brochures were not generally or systematically distributed in Maryland.

The fourth and final contact found to exist by Judge Sfekas was "the sending of information and brochures to Maryland residents and businesses." There is no evidence to support a finding that Camelback mailed brochures directly to residents of the State. The record does show that on request, Camelback would mail its brochures to any ski shop requesting them, and that in a given year it received five or six such requests from ski shops in Maryland. Mailings to Maryland ski shops were not automatically repeated on an annual basis, and were made only in response to a specific request. The only other distribution of Camelback's brochures within this State involved the ten or eleven follow-up mailings made by the sales representative following his unsuccessful attempt to solicit travel agency business in 1982.

Notwithstanding claims to the contrary by the Behnings, the jurisdiction they seek is general, and not specific. Their cause of action arose out of and is related to the alleged negligence of Camelback in the design, construction, and maintenance of its ski slopes in Pennsylvania. Even assuming, without in any way intimating, that a case of specific jurisdiction Behnings be made out by showing that the Behnings traveled to Camelback as a result of one of the few solicitations made by Camelback in this State,[7]

7. It is clear that the cause of action did not arise out of any contact Camelback had with Maryland. We need not here address the question

there is no evidence to support that contention. Indeed, as the Court of Special Appeals noted, the Behnings conceded before that court that their trip to Camelback had not been triggered by Appellant's solicitation in Maryland. *Behning* vs. *Camelback Ski Corporation*, 61 Md.App. 11, 20 n. 2, 484 A.2d 646 (1984).

While Camelback concedely has had contacts with the State of Maryland, we find those contacts, individually and collectively, insufficient to sustain a claim of general jurisdiction over that corporation. The contacts have been random, sporadic, and in some cases fortuitous. The contacts can hardly be described as of a "continuous and systematic" nature, nor does it appear that Camelback has *regularly* done or solicited business, or engaged in any other persistent course of conduct in this State. We are unable to find that by its conduct Camelback has purposefully availed itself of the privilege of conducting activities within this State and thereby invoked the benefit and protection of its laws, nor are we able to say that Camelback's conduct in connection with this State has been such that it should reasonable have "anticipated[d] being haled into court" here. *World-Wide Volkswagen Corp.* vs. *Woodson, supra*, 444 U.S. at 297, 100 S.Ct. at 567.

The legitimate interest that this State has in providing a forum to one of its citizens, and the fact that the action could probably be litigated in this State without significant inconvenience to the Appellant, while factors worthy of serious consideration, cannot alone serve as the foundation for assumption of jurisdiction. *World-Wide Volkswagen Corp.* vs. *Woodson, supra*, 444 U.S., at 294, 100 S.Ct. at 565; *Hanson* vs. *Denckla, supra*, 357 U.S. at 251, 78 S.Ct. at 1238. The protections of the Due Process Clause

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of whether the terms "arising out of" and "related to" have different meanings in this context. This question, and the related question of whether, if the terms do have different meanings, an assertion of jurisdiction based upon a cause of action related to but not arising out a defendant's contacts should be analyzed as an assertion of specific jurisdiction, are questions specifically left open by the Supreme Court. See *Helicopteros Nacionales de Columbia, S.A.* vs. *Hall*, 466 U.S. 408, 415n. 10, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984).

require that this State decline Appellees' request to exercise jurisdiction over this cause of action.

JUDGMENT OF THE COURT OF SPECIAL APPEALS REVERSED AND CASE REMANDED TO THAT COURT WITH INSTRUCTIONS TO AFFIRM THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY. RESPONDENTS TO PAY THE COSTS.

APPENDIX D

484 A.2d 646

RALPH C. BEHNING et al

v.

CAMELBACK SKI CORPORATION

61 Md. App. 11

Court of Specal Appeals of Maryland.

December 7, 1984.

Ralph Behning, a Maryland resident, was rendered quadriplegic as a result of injuries he sustained while skiing at the Camelback Ski area in Tannersville, Pennsylvania. Behning and his wife brought suit in the Circuit Court for Baltimore County against Camelback Ski Corporation, the Pennsylvania corporation which owns and operates the ski area.

Camelback challenged the court's jurisdiction by filing a Motion Raising Preliminary Objections.[1] The court denied Camelback's motion finding that Camelback had sufficient contacts with Maryland to assert personal jurisdiction under Md. Cts. & Jud. Proc. Code Ann. Section 6-103(b)(4) (1984 Repl. Vol.), consistent with the requirements of the Due Process Clause of the Fourteenth Amendment.

Camelback moved for reconsideration of the court's factual findings and conclusions. In an Amended Memorandum Opinion, the court reaffirmed its earlier findings regarding Camelback's contacts with the forum, but under the particular circumstances, granted Camelback's motion. The court based its decision on its analysis that even though Camelback had contacts which put it within the purview of the long arm statute, they did not amount to the fairly extensive contacts required by due process.

The Behnings appeal this determination. The question for our review is whether appellee's activities in Maryland are sufficient

1. Camelback also challenged the sufficiency of service. That issue, however, has not been pursued on appeal.

to subject it to the jurisdiction of our courts on a statutory and constitutional due process basis.

STATUTORY BASIS OF JURISDICTION

Appellants seek to establish jurisdiction over appellee under Section 6-103(b)(4), *supra*, of the Maryland long arm statute which provides that:

> "(b) *In general*—A court may exercise personal jurisdiction over a person, who directly or by an agent:
>
> * * * * *
>
> (4) Causes tortious injury in the State or outside of the State by an act or omission outside the State if he regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from goods, food, services, or manufactured products used or consumed in the State;"

To assert jurisdiction under Section 6-103(b)(4), *supra*, the court must find that the defendant's activities in the State met the statutory requirements either when the suit was filed, *Carter* v. *Massey*, 436 F. Supp. 29, 35 (Dist. Ct. Md. 1977), or when the cause of action arose. *Geelhoed* v. *Jensen*, 277 Md. 220, 233, 352 A.2d 818 (1976).

The court found that appellee's conduct in the forum, at the time the suit was filed, was sufficient to submit it to the jurisdiction of the Maryland courts. This included: advertising in national and regional publications disseminated in Maryland; maintaining a toll free number for Maryland residents; distributing ski information and brochures to Maryland residents and businesses; and sending a representative into Maryland to explore new marketing possibilities. Further, the court found that these activities satisfied both the first and second prongs of Section 6-103(b)(4); that is, they amounted to the "regular solicitation of business" and to "a persistent course of conduct in the State." The court did not find that appellee derived revenue from products used or consumed in the State, which would have satisfied the third prong. Appellee's contacts with Maryland need only have

satisfied one of the three prongs of Section 6-103(b)(4) to establish *in personam* jurisdiction.

Appellee contests the factual findings of the court and asserts that information about its ski area contained in publications distributed in Maryland represents the unilateral activity of third parties and that maintenance of its toll free number for Maryland residents was also the unilateral conduct of another party. It concludes that these actions should not be considered contacts with this State. It is true that the independent activity of another party cannot satisfy the requirement of contact between appellee and the forum. *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, U.S. 104 S. Ct. 1868, 1873 L.Ed. (1984). The activities from which appellee here attempts to disassociate itself, however, were undertakings in which it played an active role.

The standard this Court applies in reviewing the trial court's factual findings is whether the court was clearly erroneous. Md. Rule 1086. Thus, we will only arrive at a different factual conclusion if our review indicates that the court was clearly erroneous in its fact finding. *Simko, Inc.* v. *Graymar Co.*, 55 Md. App. 561, 464 A.2d 1104 (1983).

The record supports the court's finding that appellee advertised in national and regional publications distributed in Maryland. Appellee claims that information about its ski area contained in publications such as *Ski Resorts Magazine* did not constitute advertising by the ski resort because magazine staff wrote the copy and the information was published with no charge to appellee. In this context, however, appellee neglects to mention that it provided the information used by magazine staff. As the Supreme Court stated in *World Wide Volkswagon* v. *Woodson*, 444 U.S. 286, 294, 100 S.Ct. 559, 62 L. Ed. 2d 490 (1980), an out-of-state defendant may serve or seek to serve the market in the forum state either directly or indirectly through others. Appellee's cooperation in providing information to publications like *Ski Resorts Magazine* was an effort to serve the market indirectly and thus a contact with the State.

Appellee also directly sought to serve the Maryland market through maintenance of its toll free number and distribution of its brochures in Maryland. Although appellee claims that this service to the State was unavoidably included in its purchase of a toll free number, the record shows that appellee advertised in brochures the existence of this number for Maryland residents. Additionally, appellee claims that it sent its brochures to Maryland ski shops only at their request. What was significant was not the request, but that appellee did in fact intentionally send its brochures into Maryland.

Our review of the record demonstrates that the court was not clearly erroneous in its findings of fact. Md. Rule 1086. We, therefore, concur in that part of the court's ruling.

DUE PROCESS REQUIREMENTS

It is well established that the Legislature's intent in adopting Md. Cts. & Jud. Proc. Code Ann. Section 6-103, *supra*, was to extend *in personam* jurisdiction to the limits permitted by the Due Process Clause of the Fourteenth Amendment. *Krashes* v. *White*, 275 Md. 540, 559, 341 A.2d 798 (1975); *Geelhoed* v. *Jensen*, 277 Md. at 224. The terms contained in Section 6-103(b)(4), therefore, derive their meaning from and are coextensive with the principles of due process enunciated by the Supreme Court in *International Shoe Co.* v. *State of Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L.Ed. 95(1945) and its progeny. *Geelhoed* v. *Jensen*, 277 Md. at 227; *McKown* v. *Criser's Sales & Service*, 48 Md. App. 739, 744, 430 A.2d 91 (1981).

The due process standard of "minimum contacts" was first stated in *International Shoe Co.*, *supra*, as follows:

> ". . . due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have *certain minimum contacts* with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " (emphasis added).

326 U.S. at 316.

The "minimum contacts" standard, as further refined by the case law, requires that we balance the following factors to determine whether the assertion of jurisdiction is consistent with due process: (1) the source of the action; that is, whether this is a case of specific or general jurisdiction, *Geelhoed* v. *Jensen*, 277 Md. at 230; *Carter* v. *Massey*, 436 F. Supp. at 33; (2) the nature and quality of appellee's contacts with the State, *Id.*, *Ratliff* v. *Cooper*, 444 F.2d 745, 747 (1971); (3) the State's interest in providing a forum for the cause of action, *Geelhoed* v. *Jensen*, *supra; Carter* v. *Massey*, *supra;* and (4) the convenience of the parties. *Id.*

1. Source of the Action

First we must determine whether the source of the action is within the specific or general jurisdictional powers of the State.

The State exercises specific jurisdiction where the cause of action arises out of or is related to the out-of-state defendant's activities in the forum. Since the relationship among the defendant, the State and the litigation is the basis upon which such jurisdiction is asserted, the defendant need not have other contacts with the State. *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, - U.S. at , 104 S. Ct. at 1872. Alternatively, where the suit does not arise out of the defendant's conduct in the forum, the State may exercise its powers of general jurisdiction so long as the out-of-state defendant has sufficient independent contacts. If the defendant has such contacts, maintenance of the action does not violate due process. *Id.*

Appellants' alleged injuries did not arise out of appellee's contacts with Maryland.[2] The source of this action is, therefore, within the State's general jurisdictional powers.

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2. Appellants' Declaration alleged that they had traveled to Camelback ski area in response to commercial solicitation. The deposition testimony was ambiguous, however, regarding whether appellants had seen a Camelback brochure or other advertising prior to going to the ski area. On appeal, appellants conceded that their trip to Camelback had not been triggered by appellee's solicitation in Maryland.

2. Nature and Quality of Appellee's Contacts

Next we must determine whether appellee's contacts with Maryland are sufficient to meet the requirements of due process.

In a case such as the one *sub judice*, due process requires that appellee have "continuous and systematic" contacts with the State. *Helicopteros Nacionales de Colombia, S.A.* v. *Hall, supra; Geelhoed* v. *Jensen, supra.* This Court has described the required contacts in a case of general jurisdiction in the following way:

> "While *in personam* jurisdiction thus may be obtained over an out-of-state defendant even where the alleged injury has occurred outside Maryland, in such a case due process requires 'other contacts between the [defendant] and the state [to] be *fairly extensive* before the burden of defending a suit there may be imposed . . . without offending 'traditional notions of fair play and substantial justice.'" *Lewron Tel.* v. *Int'l All.of Th. St. Emp.*, 37 Md.App. 662, 666 (1977) quoting F. James *Civil Procedure* 640 (1965).

The contacts required by due process are coextensive with the provisions of Section 6-103(b)(4). *Geelhoed* v. *Jensen*, 277 Md. at 227; *McKown* v. *Criser's Sales & Service, supra.* As we discussed earlier, the conduct in the present case meets those statutory requirements.

Our review of these activities indicates that appellee directly sought to provide information to Maryland residents by maintaining a toll free number and by including this number in its brochures which it distributed to Maryland ski shops. Indirectly, through national and regional publications distributed in this State, appellee also provided information about its ski area to Maryland residents. Appellee sent an agent into Maryland for the express purpose of exploring new marketing possibilities. We conclude that appellee's activities, taken as a whole, are sufficiently continuous and systematic to meet the requirements of due process.

3. State Interest

The State's interest in providing a forum for its citizens plays a legitimate role in the balancing process.

One appellant, a Maryland resident, was seriously injured outside the State by the alleged act or omission of appellee. Because this appellant's injuries rendered him quadriplegic, he may need to utilize resources of this State for his care and maintenance. Further, the appellants have alleged harm to the marital entity, the situs of which is Maryland. This State has a special interest in the domestic relations of its citizens and in entertaining a suit to remedy alleged wrongs to those relations. *Geelhoed* v. *Jensen*, 277 Md. at 233.

4. Convenience of the Parties

We note at the outset that appellee has made no allegations as to any inconvenience it would suffer by litigating in this forum. Appellee is located in Tannersville, Pennsylvania which is less than 170 miles away from Towson, where the circuit court sits. The appellant and, we infer, the major medical witnesses likely to be called on the question of damages are in Maryland.

CONCLUSION

The appellate courts of Maryland have not previously determined whether the long arm statute applies to an out-of-state hotel or recreational facility.[3] Both parties refer to cases from other jurisdictions, and appellee relies on them heavily in asserting the lack of sufficient contacts in the present case for this forum to exercise personal jurisdiction. We do not consider these authorities sufficiently persuasive. Rather, we base our decision on existing Maryland case law.

The State is called upon here to assert its general jurisdictional powers. Appellee must, therefore, have sufficient independent contacts with Maryland. Appellee's contacts herein are continuous and systematic. Furthermore, the State's interest is strong since one appellant, a Maryland resident, was seriously injured, and the marital entity, the situs of which is Maryland, was alleged to have suffered injury. Finally, whatever inconvenience appellee would suffer from being forced to litigate in Maryland appears to be minimal. Thus, we conclude that maintenance of this action is consistent with the requirements of due process. Appellee's motion raising preliminary objections should have been denied.

JUDGMENT REVERSED. CASE REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. APPELLEE TO PAY COSTS.

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3. The United States District Court in the case of *Greenwood* v. *Tides*, 504 F. Supp. 992 (Dist.Ct. Md. 1980), did apply the Maryland long arm statute to an out-of-state resort.

APPENDIX E

IN THE CIRCUIT COURT FOR
BALTIMORE COUNTY AT LAW

Case No. 82-L-2488

RALPH C. BEHNING
MARY K. BEHNING

Plaintiffs

v.

CAMELBACK SKI CORPORATION
T/A CAMELBACK SKI AREAS
CAMELBACK ASSOCIATES

Defendants

MEMORANDUM OPINION

Defendant, Camelback Ski Corporation, has raised a Motion Raising Preliminary Objection for lack of personal jurisdiction in the negligence suit brought by Ralph Behning, a Maryland resident injured on Defendant's ski slopes. Camelback is a Pennsylvania corporation that operates a ski resort in the State of Pennsylvania. The question is whether the Defendant has engaged in conduct in Maryland which would satisfy the Maryland long-arm statute, Maryland Code, Courts and Judicial Proceedings Article, Section 6-103(b)(4), which states that "a court may exercise personal jurisdiction over a person who directly or by an agent: causes tortious injury in the State or outside the State by an act or omission outside the State if he regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue . . . in the State." Satisfaction of any one of these three prongs: (1) regularly does or solicits business in Maryland; (2) engages in any other persistent course of conduct in this State; or (3) derives substantial revenue is sufficient to confer jurisdiction under the statute. *Greenwood* v. *Tides Inn, Inc.*, 504 F. Supp. 992, 994.

After a review of Maryland law, the Court finds that although Defendant's contacts with this state are minimal, they are sufficient to satisfy the due process standard and Section 6-103(b)(4). The *Greenwood* case presents a similar factual situation to the case at bar. Judge Kaufman discussed the Maryland long-arm statute at length holding that the Defendant's activities met the first two prongs of (b)(4). Defendant, Tides Inn, is an out-of-state recreational facility who had mailed over a thousand newsletters to former guests in Maryland, had advertisements in national magazines, and maintained a toll free phone number for Maryland residents. In response to the argument that it was not solicitation since Maryland residents requested brochures and information, the Court stated that "whether defendant, Tides, sent its newsletter at its readers behest is irrelevant; what is important is that defendant, Tides, intentionally sent its newsletters into Maryland." *Id.* at 996.

Judge Kaufman noted the case of *McLaughlin* v. *Copeland*, 435 F. Supp. 513 (D. Md. 1977) in which that Defendant had written six letters to Maryland within four months, participated in a meeting and had engaged in settlement discussions in a law suit. This was sufficient to satisfy the second prong of (b)(4). Similar to the Tides, Defendant Camelback advertises in national and regional publications and maintains a toll free phone number for Maryland residents. It sends its information and brochures to Maryland residents and businesses. Further, a representative of the Defendant had come into the State to explore new marketing possibilities.

The legislative purpose in enacting Maryland's longarm statute "was the expansion of judicial jurisdiction up to but not beyond the outermost limits permitted in this area by due process decisions of the Supreme Court." *Lamprecht* v. *Piper Aircraft Corp.*, 262 Md. 126, 130 (1971).

This Court concludes that Defendant's activities meet the first two prongs of Section 6-103(b) (4) and that longarm jurisdiction is present. Defendant's Motion raising Preliminary Objection, therefore, is denied. Defendant is to file responsive pleading within twenty (20) days.

.....

JUDGE JAMES S. SPEKAS

Dated: .....

Copies to:
George W. White, Esquire
Bruce D. Block, Esquire
Barrett W. Freelander, Esquire
Court File

APPENDIX F

IN THE CIRCUIT COURT FOR
BALTIMORE COUNTY AT LAW

Case No. 82-L-2488

RALPH C. BEHNING
MARY K. BEHNING

Plaintiffs

v.

CAMELBACK SKI CORPORATION
T/A CAMELBACK SKI AREAS
CAMELBACK ASSOCIATES

Defendants

MEMORANDUM OPINION

This opinion supersedes the earlier opinion of this Court denying the Motion Raising Preliminary Objection brought by Defendant Camelback for lack of jurisdiction. This Court has had further opportunity to study the question in response to Defendant's Motion for Reconsideration. It is difficult to deny a seriously injured Maryland resident his day in court. However, after careful reconsideration, this Court has determined that while its prior findings of fact are still valid, its ruling as to the law was in error.

The Maryland long arm statute, Md. Cts. & Jud. Proc. Code Ann., Section 6-103(b) (1)-(4) (1974), was enacted to extend the jurisdiction of the Maryland courts to the limits of constitutionality. It is recognized that in order to determine if the application of long arm jurisdiction to a defendant is correct the court must involve itself in a two-step process. The first step determines if the defendant's conduct in Maryland falls within the provisions of the statute; the second step attempts to determine if the conduct, upon which the plaintiff relies to find jurisdiction, satisfies the requirements of due process. On at least one occasion the Federal District Court of Maryland has stated that while

the steps are different the same standard is applied to both. *Carter* v. *Massey*, 436 F. Supp. 29 (D. Md. 1977).[1] However, the *Carter* court's pronouncement appears to be the exception rather than the rule. The Maryland courts have also intimated that they consider the process as two completely different steps with separate standards.

In *Lamprecht* v. *Piper Aircraft Corp.*, 262 Md. 126 (1971), the court held that while the defendant's conduct put it within the purview of the statute, it was insufficient to meet the requirements of due process. Inasmuch as no separate finding was made at trial the court remanded the case to determine if the defendant's activities consisted of some acts by which the defendant "purposefully availed itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protection of its laws." *Id*, at 132.

In order to satisfy the due process requirements of *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945) and its progeny, the federal courts have required fairly extensive contacts between the defendant and forum state when the injury occurs outside the forum state. See, *Greenwood* v. *Tides Inn, Inc.*, 504 F. Supp. 992 (D. Md. 1980); *United Merchants and Mfg., Inc.* v. *Dash, Inc.*, 439 F. Supp. 1078 (D. Md. 1977); *Carter* v. *Massey*, 436 F. Supp. 29 (D. Md. 1977); *McLaughlin* v. *Copeland*, 435 F. Supp. 513 (D. Md. 1977).

The Maryland courts have necessarily followed federal law on the requirements of due process in this context. *Craig* v. *General Finance Corp. of Illinois*, 504 F. Supp. 1033 (D. Md. 1980). In *Geelhoed* v. *Jensen*, 277 Md. 220 (1976), the defendant in a suit for criminal conversation opposed the court's jurisdiction over him inasmuch as the tortious act was committed in California. The court noted that due process required more substantial contacts where the tortious act occurs outside of Maryland; however,

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1. In *Carter* v. *Massey*, 436 F. Supp. 29 (D. Md. 1977) the court, despite its opinion that the same standard is applied, nonetheless adhered to the requirement of more substantial contacts where the cause of action or injury arises out of state.

it found that the defendant's "sufficiently systematic and continuous contacts nevertheless justif(ied) the exercise of jurisdiction." *Id.* at 232.

Later, in *Lewron Television, Inc.* v. *Int'l. Alliance of Theatrical Stage Employees, et. al.*, 37 Md. App. 662 (1977), the plaintiff attempted to get jurisdiction over the International of a union which had locals in Maryland. The court noted that while long-arm jurisdiction may be available "even where injury has occurred outside Maryland, in such a case due process requires 'other contacts between the [defendant] and the state [to] be *fairly extensive* before the burden of defending a suit . . . may be imposed.' " *Id.* at 666 (Emphasis supplied).

Applying the recognized two-step analysis to the instant case, the defendant's activities, as proven by the plaintiff, may be sufficient to find jurisdiction under the statute; however, they are insufficient to satisfy the requirements of due process where the injury or tortious act occurs outside the state.

The defendant's contacts in Maryland before the accident, as proved by the plaintiff, consist of: (1) Dissemination of information (to advertise)[2] in national and regional publications; (2) maintenance of a toll free phone number for Maryland residents; (3) the sending of information and brochures to Maryland residents and businesses; and (4) the sending of a representative into Maryland to explore new marketing possibilities. The plaintiffs have not proven that the defendant, prior to the accident, purposefully availed himself of the benefits and protections of the State of Maryland. Consequently, while the defendant has had some conduct in Maryland which puts it within the purview of the long-arm statute the plaintiff has not proved that the defendant has the fairly extensive contacts with the State that due process requires in this situation.

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2. The Court quotes *Webster's New Collegiate Dictionary*, 8th Ed. (1977) for the definition of the verb "advertise": "to call public attention to, especially by emphasizing desirable qualities so as to arouse a desire to buy or patronize."

Defendant's Motion Raising Preliminary Objection, therefore, is granted, and the case is dismissed. Costs to be paid by the Plaintiff.

.....

JUDGE JAMES S. SFEKAS

Dated: .....

Copies to:
All Counsel
Court File

CERTIFICATE OF SERVICE

In accordance with Rule 28.3 of the Rules of the Supreme Court of the United States, I hereby certify that I have mailed this day of July, 1988, three copies of this Petition for Writ of Certiorari to Stephen P. Kling, Esq., 20 West Street, Annapolis, Maryland 21404, Attorney for the Respondent.

.....

DENNIS F. O'BRIEN